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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 U.S. Rubber Recycling, Inc., a
13 California corporation,

14 Plaintiff,

15 v.

16 ECORE International Inc., a
17 Pennsylvania corporation, and DOES 1-
10, inclusive,

18 Defendants.

CASE NO. CV 09-9516 SJO (OPx)

Assigned to Judge S. James Otero

**CORRECTED [PROPOSED]
PROTECTIVE ORDER**

1 Pursuant to Federal Rule of Civil Procedure 26(c), the Court finds that there
2 is a need to protect the parties from disclosure of trade secrets such as customer and
3 distributor lists, and other confidential research, development, or commercial
4 information such as documents relating to sales projections and marketing
5 documents, that would not be made available to the parties in this action but for the
6 special needs of this litigation. Therefore, in order to expedite the flow of discovery
7 material, facilitate prompt resolution of disputes over confidentiality, adequately
8 protect material entitled to be kept confidential, and ensure that protection is
9 afforded only to material so entitled, pursuant to the Court's authority and with the
10 consent of the parties,

11 IT IS HEREBY ORDERED THAT:

12 **1. DEFINITIONS**

13 (a) "Party" means any of the parties to this action, including officers and
14 directors of such parties.

15 (b) "Counsel" means counsel of record for any Party, and other lawyers at
16 their firm, and those attorneys' staff, or outside vendors (such as copy services, trial
17 graphics providers, and jury consultants) whose duties and responsibilities in the
18 conduct of this action require access to Protected Material.

19 (c) "Discovery Material" means:

20 (i) any information, document, tangible thing, or response to discovery
21 requests pursuant to Fed. R. Civ. P. 26, 31, 33, 34 or 36;

22 (ii) any deposition testimony or transcript pursuant to Fed. R. Civ. P. 30 or
23 31;

24 (iii) any document, thing, or premises made available for inspection or
25 produced to the Receiving Party pursuant to Fed. R. Civ. P. 26, 33, or 34;

26 (iv) any document, thing, or premises made available for inspection or
27 produced to the Receiving Party in response to a subpoena pursuant to Fed. R. Civ.
28 P. 45; and

1 (v) any other document or information exchanged or disclosed formally or
2 informally in this action.

3 (d) "Producing Party" means a party to this action, including all directors,
4 employees, and agents (other than Counsel) of the party, or any third party that
5 produces or otherwise makes Discovery Material available to a Receiving Party.

6 (e) "Receiving Party" means a party to this action, including all
7 employees, agents, and directors (other than Counsel) of the party, that receives
8 Discovery Material from a Producing Party.

9 (f) "CONFIDENTIAL" means any Discovery Material that the Producing
10 Party reasonably believes embodies: (i) commercially sensitive, competitive, or
11 other confidential business information; (ii) information invasive of an individual's
12 legitimate privacy interests; (iii) other sensitive material that the Producing Party
13 does not customarily disclose to the public and that has not been made public; or
14 (iv) third-party documents or information that the third party currently maintains as
15 CONFIDENTIAL and is seeking to maintain as CONFIDENTIAL for purposes of
16 this action.

17 (g) "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" means
18 CONFIDENTIAL information that the Producing Party reasonably believes is so
19 sensitive or confidential that in order to protect the reasonable interests of the
20 Producing Party in maintaining the confidentiality of such information, the
21 disclosure of such information must be limited to the persons to whom
22 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY information may be
23 disclosed pursuant to this Protective Order. Such information may include, but is
24 not limited to: (i) non-public sales, marketing, manufacturing, or customer-specific
25 information (bids, pricing, costs, delivery, and/or scheduling), product development
26 strategies or tactics, or strategy tactics being considered, discussed, or proposed; (ii)
27 manufacturing or other costs of doing business; (iii) manufacturing processes,
28 research and development documents; (iv) the numeric quantification of the

1 Producing Party's sales, revenues, prices, expenses, profits, earnings, or market
 2 shares; (v) product testing; (vi) current product or services strategies; (vii) future
 3 product or services strategies; (viii) documents and/or oral testimony disclosing any
 4 future, proposed, or hypothesized marketing, sales, product development, or
 5 manufacturing tactic or strategy; (ix) pending patent applications or patent
 6 disclosures for patents belonging to a Party; and (x) joint development agreements,
 7 joint ventures, and strategic alliances.

8 (h) "Protected Material" means any Discovery Material that is designated
 9 as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES
 10 ONLY in accordance with paragraphs 2(a) and 2(b) below, and any copies,
 11 abstracts, summaries, or information derived from such Discovery Material, and any
 12 notes or other records embodying or disclosing the contents of such Discovery
 13 Material.

14 2. DESIGNATION OF PROTECTED MATERIAL

15 (a) Any Discovery Material produced or given in this action that is
 16 asserted by the Producing Party to contain or constitute CONFIDENTIAL
 17 information shall be so designated by the Producing Party. Each such Discovery
 18 Material, including every page (where reasonable) of every document or transcript
 19 and any electronic media containing CONFIDENTIAL information, shall be
 20 marked on its face with the following legend:

21 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

22 If the Receiving Party intends to show non-CONFIDENTIAL portions of a
 23 document, transcript, or electronic media containing CONFIDENTIAL information
 24 to a person or Party not described below in paragraph 3(a), it shall first redact all
 25 pages designated CONFIDENTIAL.

26 (b) Any Discovery Material produced or given in this action that is
 27 asserted by the Producing Party to contain or constitute CONFIDENTIAL –
 28 OUTSIDE ATTORNEYS' EYES ONLY information shall be so designated by the

1 Producing Party. Each such Discovery Material, including every page (where
2 reasonable) of every document or transcript and any electronic media containing
3 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY information, shall be
4 marked on its face with the following legend:

5 **CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY**
6 **SUBJECT TO PROTECTIVE ORDER**

7 If the Receiving Party intends to show non-CONFIDENTIAL – OUTSIDE
8 ATTORNEYS’ EYES ONLY portions of a document, transcript, or electronic
9 media containing CONFIDENTIAL – ATTORNEYS’ EYES ONLY information to
10 a person or Party not described below in paragraph 3(b), it shall first redact all
11 pages designated CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.

12 (c) All deposition testimony taken in this action will be deemed
13 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY for a period of thirty
14 (30) days from receipt of the final transcript. Counsel for the Producing Party shall
15 designate and mark which portions of the transcript should be designated
16 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY, CONFIDENTIAL
17 or non-CONFIDENTIAL by the end of the thirty (30) day period, subject to
18 paragraph 6(f).

19 (d) When a Party produces files and records for inspection, no marking
20 need be made by the Producing Party in advance of the inspection. For purposes of
21 the initial inspection, all documents within the produced files shall be considered
22 marked as CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.

23 Thereafter, upon selection of specified documents for copying by the inspecting
24 Party, the Producing Party shall mark the copies of such documents, if necessary,
25 with the appropriate confidentiality marking at the time that the copies are produced
26 to the inspecting Party.

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1 **3. ACCESS TO PROTECTED MATERIAL**

2 (a) Subject to paragraphs 3(d), 3(e) and 3(f), in the absence of an order of
3 the Court, any CONFIDENTIAL information produced in accordance with the
4 provisions of paragraph 2(a) above shall be used solely for purposes of the
5 prosecution and defense of this action and shall not be disclosed to or discussed
6 with any person other than: (i) Counsel for the Receiving Party; (ii) the Receiving
7 Party, if the Receiving Party is an individual, (iii) if the Receiving Party is not an
8 individual, employees of the Receiving Party or those hired by Receiving Party
9 whose review of such information the Receiving Party reasonably believes is
10 required for the conduct of this action; (iv) outside experts or consultants who are
11 engaged for the purpose of this action by the Receiving Party and such experts' or
12 consultants' staff, subject to paragraph 3(d); (v) the individual(s) who authored,
13 prepared, or received the information; (vi) certified court reporters taking testimony
14 involving such CONFIDENTIAL information; (vii) the Court (including any trier of
15 fact) in connection with the proceedings in this action.

16 (b) Subject to paragraphs 3(d), 3(e) and 3(f), in the absence of an order of
17 the Court, any CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY
18 information produced in accordance with the provisions of paragraph 2(b) above
19 shall be used solely for purposes of the prosecution and defense of this action and
20 shall not be disclosed to or discussed with any person other than: (i) Counsel for
21 the Receiving Party; (ii) outside experts or consultants who are engaged for the
22 purpose of this action by the Receiving Party and such experts' or consultants' staff,
23 subject to paragraph 3(d); (iii) the individual(s) who authored, prepared, or received
24 the information; (iv) certified court reporters taking testimony involving such
25 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY information and their
26 support personnel; and (v) the Court (including any trier of fact) in connection with
27 the proceedings in this action.

28

1 (c) Custody of Protected Material. All documents containing information
2 received from the producing party designated CONFIDENTIAL or
3 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY and notes or other
4 records regarding that information shall be maintained in the custody of Counsel for
5 the Parties, and no partial or complete copies thereof containing Protected Material
6 shall be retained by anyone else, except that outside experts and consultants may
7 retain documents on a temporary basis for purposes of study, analysis, and
8 preparation of the case. A person with custody of Protected Material shall maintain
9 it in a manner that limits access to persons authorized pursuant to paragraph 3(a) or
10 3(b) to have access to Protected Material.

11 (d) Outside Experts and Consultants. Subject to the provisions of this
12 Protective Order, all Protected Material may be disclosed to any outside expert or
13 consultant who has agreed to be bound by the terms of this Protective Order by
14 signing an Acknowledgement form attached as Exhibit A.

15 (e) Acknowledgment of Protective Order. Before obtaining access to any
16 Protected Material covered by this Protective Order, any person who is authorized
17 to have access to Protected Material pursuant to paragraph 3(a)(ii), 3(a)(iii),
18 3(a)(iv), or 3(b)(ii) of this Protective Order must have agreed in writing to be bound
19 by the terms of this Protective Order by signing an Acknowledgement form
20 attached as Exhibit A. All such signed Acknowledgment forms, except for those
21 Acknowledgment forms signed by outside experts and consultants pursuant to
22 paragraph 3(c), shall be given to the other Party at the final resolution of this matter.
23 Acknowledgment forms signed by outside experts and consultants pursuant to
24 paragraph 3(c) shall be kept by the Party in possession for the duration of this
25 litigation and must be furnished in the event of a breach or challenge.

26 (f) Disclosure Pursuant to Consent. Protected Material also may be
27 disclosed to anyone so authorized by prior written consent of the designating Party
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1 or non-Party, and no Party is restricted in any way by this Protective Order in
2 disclosing its own Protected Material.

3 (g) Disclosure of Confidential Transcripts to the Deponent. Deposition
4 transcripts containing Protected Material may be shown to the deponent for the
5 purpose of correction, but the deponent may not retain a copy of the transcript
6 unless (s)he has agreed in writing to be bound by the terms of this Protective Order
7 by signing an Acknowledgement form attached as Exhibit A.

8 (h) If a document designated as CONFIDENTIAL or CONFIDENTIAL –
9 OUTSIDE ATTORNEYS' EYES ONLY refers to the conduct or affairs of a
10 potential witness, the Parties' Counsel may discuss such conduct or affairs with the
11 witness, but must do so without revealing that such document exists, its author, or
12 its source, unless the witness is otherwise authorized under this Protective Order to
13 have access to such document.

14 (i) The limitations on disclosure contained in this Protective Order shall
15 not apply to documents or information that (i) Receiving Party can prove were in
16 the possession of the Receiving Party before disclosure by the Producing Party
17 without a restriction from any Party to this action; or (ii) are or become published or
18 available in a manner that is not in violation of this Protective Order.

19 **4. DISCLOSURE TO EXPERTS OR CONSULTANTS**

20 In addition to the foregoing, at least five business days prior to making the
21 first disclosure of Protected Material to any expert or consultant, the Party making
22 such disclosure shall provide the Producing Party with a copy of the
23 Acknowledgment form signed by the individual and provide written notice:

- 24 (a) Disclosing the identity of the expert or consultant;
- 25 (b) Identifying the present employer of the expert or consultant; and
- 26 (c) Providing a resume or curriculum vitae, including the cases in which
27 he or she has testified as an expert at trial or by deposition in the preceding four
28 years.

1 The disclosure of information regarding consultants or experts under this
2 Order shall not constitute a waiver of attorney-work product or privilege, and shall
3 not replace or modify the procedures provided under Fed. R. Civ. Proc. 26(a)(2) or
4 this Court's Scheduling Order. Additionally, the Parties stipulate that experts and
5 consultants are not required to disclose or produce, and the Parties shall not conduct
6 discovery concerning or seek to introduce evidence of drafts of expert declarations
7 or reports. The parties also stipulate that communications between experts or
8 consultants and counsel are not discoverable except that the experts or consultants
9 may be questioned about such communications during depositions or trial."

10 Any Party may object to a disclosure to an expert or consultant within five
11 business days after receipt of the copy of the signed Acknowledgment form and
12 written notice set forth herein, by stating specifically in writing the reasons why the
13 Party believes such person should not receive the Protected Material.

14 In the event of an objection, no disclosure of Protected Material shall be
15 made to the expert or consultant for a period of eight business days following the
16 receipt of the objection. The Party objecting to the disclosure to the expert or
17 consultant and the Party wishing to disclose such Protected Material to the expert or
18 consultant shall make good faith efforts to resolve the dispute within five business
19 days following the receipt of the objection. If no such resolution is obtainable, the
20 objecting Party may move the Court, by motion, pursuant to Local Rule 37-1 of the
21 U.S. District Court for the Central District of California, for an order that disclosure
22 not be made to such expert or consultant or that the disclosure be made only upon
23 certain conditions. The moving Party shall have the burden of establishing that
24 good cause exists for such an order, and shall seek to have the matter heard at the
25 earliest possible date. If the moving party's portion of a joint stipulation is not
26 received within three business days following the parties' meet and confer, the
27 Protected Material may be disclosed to such expert or consultant for the purposes of
28 and upon the conditions herein stated. If such a motion is made, there shall be no

1 disclosure to such expert or consultant until the Court has ruled upon the motion,
2 and then only in accordance with the ruling so made.

3 **5. COURT PROCEDURES**

4 If a document containing CONFIDENTIAL or CONFIDENTIAL –
5 OUTSIDE ATTORNEYS' EYES ONLY information is filed with the Court, it shall
6 be filed under seal in compliance with Local Rule 79-5.1 of the U.S. District Court
7 for the Central District of California and Section V of General Order -07 of the
8 Central District of California (revised August 2, 2010).

9 Any papers containing Protected Material shall indicate clearly what portions
10 are designated as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE
11 ATTORNEYS' EYES ONLY. Upon request of the disclosing Party, the Court shall
12 return the originals of all CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY documentation, provided that such request is made within thirty (30)
14 days of the final disposition of this case.

15 Nothing in this Protective Order shall be deemed to alter or otherwise amend
16 the Parties' obligation to follow the procedures set forth in Federal Rules of Civil
17 Procedure, the Local Rules of the U.S. District Court for the Central District of
18 California or any Order by this Court. To the extent there is any conflict between
19 the obligations set forth in this Protective Order – which the parties do not believe is
20 the case – the Federal Rules of Civil Procedure, the Local Rules of the U.S. District
21 Court for the Central District of California and any Order by this Court shall
22 control.

23 **6. HANDLING OF PROTECTED MATERIAL**

24 (a) Nothing herein shall restrict a person authorized to have access
25 pursuant to paragraph 3(a) or 3(b) from making working copies, abstracts, digests,
26 and/or analyses of Protected Information for use in connection with this action.
27 Such working copies, abstracts, digests, and analyses shall be deemed to have the
28 same level of protection as the original Protected Material under the terms of this

1 Protective Order. Further, nothing herein shall restrict an authorized recipient from
2 converting or translating such information into machine-readable form for
3 incorporation in a data retrieval system used in connection with this action,
4 provided that access to such information, in whatever form stored or reproduced,
5 shall be limited to authorized recipients.

6 (b) If a Party through inadvertence produces any CONFIDENTIAL or
7 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY document or thing
8 without labeling, marking, or otherwise designating it as such in accordance with
9 the provisions of this Protective Order, the Producing Party may give written notice
10 to the Receiving Party that the document or thing produced is deemed
11 CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
12 and should be treated as such in accordance with the provisions of this Protective
13 Order. The Receiving Party must treat such document or thing with the noticed
14 level of protection from the date such notice is received. Promptly upon providing
15 such notice to the Receiving Party, the Producing Party shall provide the Receiving
16 Party with another copy of the document or thing that bears the new confidentiality
17 designation under this Protective Order, at which time the Receiving Party shall
18 either destroy or return the originally produced document or thing to the Producing
19 Party at the option of the Producing Party. The Receiving Party’s disclosure, prior
20 to the receipt of notice from the Producing Party of a new designation, to persons
21 not authorized by paragraph 3(a) or 3(b) to have access to such information
22 pursuant to the subsequent designation shall not be deemed a violation of this
23 Protective Order. However, the Receiving Party shall make a good faith effort
24 promptly to retrieve such document or thing from such persons not authorized to
25 receive such information and to obtain agreement from the person to whom the
26 disclosure was made to be bound by this Protective Order. The Receiving Party
27 shall timely notify the Producing Party of the disclosure and the identity of the
28 person or entity to whom the disclosure was made.

1 (c) In accordance with Fed. R. Civ. Proc. 26(b)(5)(B), if a Producing Party
2 inadvertently produces a document that otherwise is not discoverable for reasons of
3 the attorney-client privilege or work product immunity or both, such inadvertent
4 production shall not constitute any waiver of attorney-client privilege or work
5 product immunity and all copies of such inadvertently produced documents shall
6 promptly be returned by the Receiving Party to the Producing Party upon demand.

7 (d) A Party or present employee of a Party may be examined and may
8 testify concerning all CONFIDENTIAL and CONFIDENTIAL – OUTSIDE
9 ATTORNEYS’ EYES ONLY information produced by that Party, provided that the
10 present employee of the Party is authorized by the Party to have access to the
11 CONFIDENTIAL and CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
12 ONLY information produced by that Party.

13 (e) A former employee of a Party, a current or former consultant of a
14 Party, and non-Parties may be examined and may testify concerning any document
15 containing CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS’
16 EYES ONLY information of a Producing Party that clearly appears on its face or
17 from other documents or testimony to have been prepared by, received by, known
18 by, or communicated to the employee, consultant or non-Party.

19 (f) If no confidentiality designation of deposition testimony is made at the
20 time of the deposition, any transcript containing CONFIDENTIAL or
21 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY information shall be
22 designated as containing such information by no later than thirty (30) calendar days
23 after the date of such deposition. Otherwise, such transcript shall not be deemed
24 Protected Material.

25 7. PROCEDURE TO CHALLENGE DESIGNATIONS

26 This Protective Order shall not prevent any Party from moving the Court for
27 an order that information designated as CONFIDENTIAL or CONFIDENTIAL –
28 OUTSIDE ATTORNEYS’ EYES ONLY by a Producing Party is not, in fact,

1 CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
 2 information. Prior to so moving, the Party seeking to reclassify the information
 3 shall seek the Producing Party’s agreement. The Producing Party shall have ten
 4 (10) business days to respond to such request. In any motion, the Producing Party
 5 shall have the burden of establishing before the Court the need for classification as
 6 CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
 7 ONLY.

8 No Party shall be obligated to challenge the appropriateness of any
 9 confidentiality designation, or confidential information by another Party or person,
 10 and the failure to do so shall not constitute a waiver or otherwise preclude a
 11 challenge to the designation in another or subsequent matter or action.

12 **8. NO PROBATIVE VALUE**

13 This Protective Order shall not abrogate or diminish any contractual,
 14 statutory, or other legal obligation or right of any Party or person with respect to
 15 any Protected Material. The fact that information is marked with a confidentiality
 16 designation under the Protective Order shall not be deemed to be determinative of
 17 what a trier of fact may determine to be confidential or proprietary or a trade secret.
 18 The fact that any information is disclosed, used, or produced in any court
 19 proceeding in this action with a confidentiality designation shall not be offered in
 20 any action or proceeding before any court, agency, or tribunal as evidence of or
 21 concerning whether or not such information is admissible, confidential, or
 22 proprietary.

23 **9. RIGHT TO FURTHER RELIEF**

24 Nothing in this Protective Order shall abridge the right of any person to seek
 25 judicial modification or amendment of this Protective Order.

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10. RIGHT TO ASSERT OTHER OBJECTIONS

This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, or other grounds for not producing Discovery Material.

11. FINAL DISPOSITION

Within ninety (90) calendar days after final termination of this action, each Party shall assemble all documents and things furnished and designated by any other Party or non-Party as containing CONFIDENTIAL or CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY information, and all copies, summaries, and abstracts thereof, and shall either (a) return the documents and things to the Producing Party, or (b) destroy the documents and things; provided, however, that the attorneys of record for each Party shall be entitled to retain all pleadings, motion papers, legal memoranda, correspondence, work product, transcripts and exhibits thereto, and attorney-client communications that include or are derived from Protected Material. If a Party elects to destroy the documents, a Certificate of Destruction shall be served on all attorneys of record within ninety (90) calendar days of final termination of this action.

12. SURVIVAL OF OBLIGATIONS

The obligations created by this Protective Order shall survive the termination of this action unless otherwise modified by the Court. The Court shall retain jurisdiction, even after termination of this action, to enforce this Protective Order and to make such amendments and modifications to this Protective Order as may be appropriate.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 ZUBER & TAILLIEU LLP

OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, L.L.P.

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4
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By: /s/ Robert C. Nissen

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Attorneys for Defendant

ECORE International, Inc.

21 IT IS SO ORDERED:

22
23 Date: 9/17/, 2010



The Honorable Oswald Parada
United States Magistrate Judge

APPENDIX A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

U.S. Rubber Recycling, Inc. v. ECORE International, Inc.

U.S. District Court for the Central District of California, Los Angeles Division
Civil Action No. CV 09-9516 SJO (OPx)

I, _____, declare under penalty of perjury under the laws of the United States and the State of California that I have read and understand in its entirety the Protective Order in the above-referenced lawsuit, and agree to adhere and to be bound by its terms. I understand that any unauthorized disclosure of confidential information constitutes a violation of this Court's Protective Order, for which I may be held in contempt of court. I hereby submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcement of the Protective Order.

Date: _____

Name: _____